



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FTI - 175003

PRELIMINARY RECITALS

Pursuant to a petition filed on June 9, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Dane Cty. Dept. of Human Services regarding FoodShare benefits (FS), a hearing was held on July 5, 2016, by telephone.

The issue for determination is whether the 6/14/13 tax intercept notice for \$1,200 was issued correctly.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Dane Cty. Dept. of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was previously a resident of WI and is now a resident of NY.

2. Petitioner applied for FS in WI on November 3, 2011. He was enrolled.
3. Petitioner was incarcerated in February 2012. While petitioner was incarcerated, his benefits were used. The agency determined this to be an overpayment.
4. On 1/8/13, the agency issued an overpayment notice for the period from 4/1/12 to 9/30/12 in the amount of \$1,200 to [REDACTED]. Dunning notices were also sent to this address on 3/4/13, 4/2/13, and 5/2/13.
5. The Department issued a tax intercept notice in the amount of \$1,200 on 6/14/13.

DISCUSSION

Wis. Stat., §49.85(2)(a), provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FS, and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at §49.85(3)(a).

The hearing right is described in Wis. Stat., §49.85(4)(a), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

The federal regulation concerning FS overpayments begins: "The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error...." 7 C.F.R. §273.18(b). Once timely and adequate notice is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. §273.15(g); see also Wis. Admin. Code, §HA 3.05(3)(b).

My first conclusion is that petitioner was never notified that he was liable for an overpayment. Although the FS regulations discuss notification being sent to the FS household, by the time the overpayment notice was sent petitioner was incarcerated in the Wisconsin state prison system. But I cannot conclude that petitioner is liable for a large overpayment without any evidence that he was notified.

Furthermore, although the tax intercept statute provides that a notice has to be sent only to the person's last known address, the statute is based upon the assumption that the person was notified about the overpayment initially and either did not appeal or lost an appeal. I cannot conclude that a tax intercept notice sent to a last known address that was not received by petitioner deprives him of his right to appeal the merits of the overpayment when he was not notified of the overpayment when it originally was established.

With that conclusion, I find that petitioner did not have an opportunity to contest the overpayment claim. Petitioner must be given an opportunity to appeal the underlying overpayment. If the agency would like, it may re-issue overpayment notices to petitioner with new appeal rights.

I note that if petitioner seeks an appeal of any subsequent action by the agency, it would be in his best interests to attempt to maintain a less disrespectful and belligerent demeanor. While these hearings are often held on the telephone *for the convenience of petitioners* they are still legal proceedings and the speaking out of turn and shouting over others is discouraged and does reflect well on petitioner, his credibility or make him appear more persuasive.

CONCLUSIONS OF LAW

1. Prior to having his tax refunds intercepted to recover an FS overpayment, petitioner did not have an opportunity for a hearing on the merits of the overpayment because the agency did not notify him of the claim and the tax intercept notice was sent to an address at which petitioner did not live.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to rescind the 6/14/13 tax intercept action and refund any recouped sums. The agency shall take the action within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

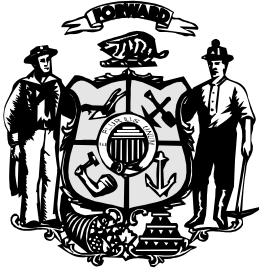
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 3rd day of August, 2016

\s _____
John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 3, 2016.

Dane Cty. Dept. of Human Services
Public Assistance Collection Unit